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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,023	10/10/2003	Mario J. Bravomalo	29471.4	3171

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COX SMITH MATTHEWS INCORPORATED  
112 EAST PECAN STREET, SUITE 1800  
SAN ANTONIO, TX 78205-1521

EXAMINER
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PATEL, JAYESH A

ART UNIT	PAPER NUMBER
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2624

MAIL DATE	DELIVERY MODE
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12/13/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/684,023

Applicant(s)

BRAVOMALO ET AL.

Examiner

Jayesh A. Patel

Art Unit

2624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) 1-27 and 48-50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28,29,31,33-35 and 43-47 is/are rejected.
- 7) ☒ Claim(s) 30,32 and 36-42 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 02/04/2005.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Priority***

1. This application repeats a substantial portion of prior Application No. 09/560243, filed On Apr 27 2000, and adds and claims additional disclosure not presented in the prior application. Since this application names an inventor or inventors named in the prior application, it may constitute a continuation-in-part of the prior application. Should applicant desire to obtain the benefit of the filing date of the prior application, attention is directed to 35 U.S.C. 120 and 37 CFR 1.78.
2. The Independent Claim 28 and its dependent claims has the added limitation (CIP) therefore the effective filing date is 10/10/2003 and does not get the priority date of the application 09/560243.
3. Claims 1-27 and 48-50 have been withdrawn. The examiner also believes that Claims 44-47 should be withdrawn from this elected group as they are directed to accessing the health risks such as for example Claims 48-50.
4. Claims 28-47 are currently examined based on the Election of group III without traverse.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 28, 29, 31, 33-35 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Posa (US 20030108851) hereafter Posa in view of Takeuchi et al (US 5267154) hereafter Takeuchi.

5. Regarding Claim 28, Posa discloses a method (**Figs 1 and 2**) for producing an image predictive of a person's appearance resulting from following a prescribed regimen, said method comprising: receiving a first data set associated with said person and said first data set comprising an initial weight measurement, a height measurement, a gender designation, and an age at (**Page 2 Para 0026**); receiving a second data set comprising at least one goal desired from said regimen (**Page 1 Para 0010,0011 and Page 2 Para 0013, 0014 where the desired data set is entered by the client or person and the images are modified accordingly as seen in Fig 2.**); and creating a second image representative of said person in a post-regimen condition by modifying said first image based on said second data set (**Page 2 Paras 0013 to 0020**). Posa discloses that the remote server creates a stereoscopic representation of the person using the recorded images and allowing the stereoscopic images to be modified by the modified measurements at (**Page 2 Para 0017**), however is silent

and does not disclose creating a first image representative of said person in a pre-regimen condition by modifying a generic image based on said first data set.

Takeuchi discloses creating a first image representative of said person in a pre-regimen condition by modifying a generic image based on said first data set at **(Fig 3A, Col 2 Lines 41-51, Col 5 Lines 26 -67 and Col 8 Lines 35-67 through Col 9 Lines 1-3)**. Takeuchi further discloses at **(Col 10 Lines 45 through Col 11 Lines 2)** where the generic (biological) image is modified based on the data such as age, height, weight etc. Takeuchi discloses that the disclosed method and system produces a realistic and individuality (looks like an individual) image by computing less data at **(Col 1 Lines 10-14, 32 and 59-61)**. Posa and Takeuchi are from the same field of endeavor and are analogous art, therefore it would have been obvious for one of ordinary skill in the art at the time the invention is made to have used the teachings of Takeuchi in the method and system of Posa for the above reasons.

6. Regarding Claim 29, Posa and Takeuchi discloses the method of claim 28.

Posa discloses further comprising calculating an ideal weight and an estimated body fat percentage for said person at **(Page1 Para 0005)**.

7. Regarding Claim 31, Posa and Takeuchi discloses the method of claim 28.

Posa further disclose wherein said creating a second image comprises calculation of an age factor **(Page 2 Para 0026 where the data collected is**

**used in creating the image).**

**8. Regarding Claim 33, Posa and Takeuchi disclose the method of claim 28.**

Posa further disclose wherein said at least one goal is selected from the group consisting of weight loss, muscle gain (**body building**), and a combination of weight loss and muscle gain at **(Page 1 Para 0001 and Para 0005).**

**9. Regarding Claim 34, Posa and Takeuchi disclose the method of claim 28.**

Posa further disclose wherein said regimen comprises at least one of the following: resistance exercise, cardiovascular exercise, nutrition planning, dietary supplement intake, and personal training at **(Page 1 Para 0010).**

**10. Regarding Claim 35, Posa and Takeuchi disclose the method of claim 28.**

Posa further disclose wherein said at least one goal comprises muscle gain and wherein said muscle gain (body building at Para 0001) is calculated based on at least one of the following factors: a base muscle gain factor; a supplement boost factor; a resistance compliance factor; an age factor; a nutrition factor; and a gender factor at **(Paras 0010, 0011, 0026 and 0029)** where age diet and gender are used for creating the images with respect to the muscle gain or (**body building**) program.

**11. Regarding Claim 43, Posa and Takeuchi disclose the method of claim 29.**

Posa further disclose comprising recalculating said body fat percentage to account for fat loss or muscle gain resulting from said regimen in **(Para 0005 )** where the difference is determined between before and after images. Posa discloses the difference and this is calculated based on the calculation and recalculation in the before and the after images.

Claims 44- 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Posa in view of Takeuchi and in further view of Abrams et al. (US 5673691) hereafter Abrams.

**12.** Regarding Claim 44, Posa and Takeuchi disclose the method of claim 28. Posa further disclose that his invention is an improvement in health related monitoring in para 0004. Posa and Takeuchi are however silent and do not disclose further comprising the step of estimating at least one health risk for said person in said pre-regimen condition.

Abrams disclose a method and apparatus that monitor weight loss program that reduce and control diabetes, stress, hypertension and other health conditions at **(Col 5 Lines 40-43)** which would comprise estimating at least one health risk for said person in said pre-regimen condition. Abrams further disclose that the invention achieves precision, flexibility and immediacy in weight monitoring and caloric adjustment by dynamically adjusting the weight and the behavior at **(Col 5 Lines 19-29)**. Posa, Takeuchi and Abrams are from the same

field of endeavor and are analogous art, therefore it would have been obvious for one of ordinary skill in the art at the time the invention was made to have used the teachings of Abrams of provide appropriate warnings and adjustments in the method and apparatus of Posa and Takeuchi for the above reasons.

13. Regarding Claim 45, see the explanation of Claim 44.

14. Regarding Claim 46, see the explanation of Claim 44.

15. Regarding Claim 47, see the explanation of Claim 44.

#### ***Allowable Subject Matter***

Claims 30, 32, 36-42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jayesh A. Patel whose telephone number is 571-270-1227. The examiner can normally be reached on M-F 7.00am to 4.30 pm (5-4-9). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jingge Wu can be reached on 571-272-7429. The fax



phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jayesh Patel  
12/10/07



JINGGE WU  
SUPERVISORY PATENT EXAMINER